

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RUBEN BLAJOS,	:	
Plaintiff	:	CIVIL ACTION NO. 3:12-2567
v.	:	(MANNION, D.J.)
		(CARLSON, M.J.)
UNITED STATES OF AMERICA,	:	
Defendant	:	

O R D E R

AND NOW, THIS 20th DAY OF FEBRUARY, 2013, upon consideration of the report and recommendation of United States Magistrate Judge Martin C. Carlson, (Doc. No. [6](#)), and following an independent review of the record, it appearing that neither party has objected to the judge's report and recommendation and that there is no clear error on the face of the record,¹ the report and recommendation will be adopted in part.

Judge Carlson found that the plaintiff's initial complaint failed to properly state a claim. Judge Carlson recommended that the plaintiff's complaint be

¹ When no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Fed. R. Civ. P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987)(explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. [28 U.S.C. § 636\(b\)\(1\)](#); Local Rule 72.31.

dismissed without prejudice and that plaintiff be afforded an opportunity to amend his complaint. After Judge Carlson issued his report and recommendation but before the issuance of this order, the plaintiff filed an amended complaint, (Doc. No. [7](#)). The court will construe that document as the amended complaint called for in Judge Carlson's report and recommendation. Therefore, the court will adopt the report and recommendation to the extent it recommends that the plaintiff be allowed to amend his complaint and will accept the amended complaint filed January 9, 2013.

In addition, upon review of the amended complaint, the court is now able to discern that the plaintiff's claims arise from an alleged salmonella outbreak at the United States Prison at Canaan in Waymart, Pennsylvania which occurred on June 25, 2011. The plaintiff has filed a motion requesting mediation of his claim, (Doc. No. [3](#)). The court is aware of ongoing attempts at resolution through mediation in other cases related to the June 2011 incident. The court will remand the case so that Judge Carlson may determine whether mediation is appropriate for the plaintiff's specific claims.

THEREFORE, IT IS HEREBY ORDERED, THAT:

- (1) The report and recommendation of Judge Carlson, (Doc. No. [6](#)), is **ADOPTED** as set forth above;

- (2) The plaintiff's motion for leave to proceed *in forma pauperis*, (Doc. No. [2](#)), is **GRANTED**;
- (3) The case is **REMANDED** to Judge Carlson for further pretrial case management.

Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

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